FILED

10-675 NOV 18 2010

OFFICE OF THE CLERK

No. 10-___

IN THE

Supreme Court of the United States

MIGUEL ANGEL GONZALEZ GUILBOT,
CARLOS A. GONZALEZ GUILBOT, AND
MARIA ROSA DEL ARENAL DE GONZALEZ,
Petitioners,

v.

MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF MIGUEL ANGEL LUIS GONZALEZ Y VALLEJO, LUIS A. GONZALEZ GUILBOT, JOSE G. GONZALEZ GUILBOT, CARMEN I. GONZALEZ GUILBOT DE URIARTE, GERARDO GONZALEZ GUILBOT, JAVIER GONZALEZ GUILBOT, MADEIRA INTERNATIONAL LTD, FRANCEVILLE INTERNATIONAL, LTD, ARKHANGEL INTERNATIONAL LTD, L&T AMERICAN CORPORATION, AND TG INTERAMERICA CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

ARMANDO LOPEZ
ARMANDO LOPEZ, P.C.
8433 Katy Freeway
Suite 200
Houston, Texas 77024
(713) 647-8944
a.h@sbcglobal.net

W. SHERMAN ROGERS
Counsel of Record
Attorney At Law
2900 Van Ness Street, N.W.
Suite 405
Washington, D.C. 20008
(202) 806-8035
srogers@law.howard.edu

Attorneys for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

1. Whether the United States Supreme Court should resolve the conflict among the United States Circuit Courts of Appeal as to whether, in light of the "plain language" and legislative history of 28 U.S.C. § 1447(c), the only event that permits re-vesting of jurisdiction in a state trial court after a federal remand is when the clerk of the federal district court mails a certified copy of the remand order to the clerk of the state court.

2. Whether the "plain language" and legislative history of 28 U.S.C. § 1447(c) preempts any attempt by federal courts to create a federal common law rule holding that a federal remand order is self-executing and that state courts are re-vested with jurisdiction without the necessity for the clerk of the federal court to mail a certified copy of the remand order to the clerk of the state court.

3. Whether, in light of the "plain language" and legislative history of 28 U.S.C. § 1447(c), the Supremacy Clause of Article VI of the United States Constitution preempts Texas Rule of Civil Procedure 237a and the Supreme Court of Texas's decision in this case to the extent that they expressly permit a plaintiff to file a certified copy of a remand order with the state court clerk.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	2
STATUTES AND REGULATIONS INVOLVED	2
STATEMENT	4
A. Overview and Summary	4
1. Background Facts	4
2. Petitioner's Removal to Federal Court.	5
B. The Lower Courts' Decisions	6
1. The Decision of the Intermediate Appellate Court—Court of Appeals of Texas, Houston (14th District)	6
2. The Opinion of the Supreme Court of Texas	7
REASONS FOR GRANTING THE WRIT	8
I. THE VAST MAJORITY OF FEDERAL COURTS FOLLOW THE PLAIN LANGUAGE OF 28 U.S.C. § 1447(c), WHICH STATES THAT JURISDICTION IS NOT RETURNED TO THE STATE COURT ON REMAND UNTIL THE DISTRICT COURT CLERK MAILS A CERTIFIED COPY OF THE REMAND ORDER TO THE CLERK OF THE STATE COURT, AND THIS COURT SHOULD ADOPT THAT APPROACH	8

TABLE OF CONTENTS—Continued

Page

A. The Majority Position 10

B. The Minority Position 12

II. THE "PLAIN LANGUAGE" AND LEGISLATIVE HISTORY OF 28 U.S.C. § 1447(c) PREEMPTS ANY ATTEMPTS BY FEDERAL COURTS TO CREATE A FEDERAL COMMON LAW RULE THAT HOLDS THAT FEDERAL DISTRICT COURT REMAND ORDERS ARE SELF-EXECUTING AND THAT STATE COURTS ARE RE-VESTED WITH JURISDICTION WITHOUT THE NECESSITY FOR THE CLERK OF THE FEDERAL DISTRICT COURT TO MAIL A CERTIFIED COPY OF THE REMAND ORDER TO THE CLERK OF THE STATE COURT 13

III. THE SUPREMACY CLAUSE OF THE CONSTITUTION PREEMPTS ANY EFFORT BY THE STATE OF TEXAS OR ITS COURTS TO AUTHORIZE A RULE OF CIVIL PROCEDURE (RULE 237a) OR OTHER RULE WHICH EXPRESSLY PERMITS A *PLAINTIFF* TO FILE A CERTIFIED COPY OF A REMAND ORDER WITH THE STATE COURT CLERK 15

CONCLUSION 16

TABLE OF CONTENTS—Continued

APPENDIX — Page

APPENDIX A (The Intermediate Appellate Court's Opinion—the Court of Appeals of Texas, Houston (14th Dist.) 1a

APPENDIX B (The Opinion of the Supreme Court of Texas) 13a

APPENDIX C (The Texas Supreme Court's August 20, 2010 Denial of Petition to Revise or Reverse the Court's Judgment and the Court's Mandate) 30a

APPENDIX D (Excerpts From Reporter's Transcript of *Ex-Parte* Dialogue Between Trial Judge Mike Wood and Plaintiffs' Attorney at the Trial Court Level—Hector Longoria)..... 34a

TABLE OF AUTHORITIES

CASES	Page
Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)	14
Blazer Elec. Supply Co. v. Bertrand, 952 P.2d 857, 859 (Colo. Ct. App. 1998)	10
Citizens Bank & Trust Co. v. Carr, 583 So.2d 864 (La. App. 1st Cir. 1991)	13
Cook v. J.C. Penney Co., Inc., 558 F. Supp. 78 (D.C. Iowa 1983)	10
De Gonzalez v. Guilbot, 315 S.W.3d 533 (Tex. 2010)	2, 12
Dice v. Ackron, Canton & Youngstown Railroad Co., 342 U.S. 359 (1952)	9, 15
Erie v. Tompkins, 304 U.S. 64 (1938)	14
Felder v. Casey, 487 U.S. 131 (1988)	9, 15
Federal Deposit Insurance Corp. v. Santiago Plaza, 598 F.2d 634 (1st Cir. 1979)	10
Guilbot v. The Estate of Miguel Angel Luis Gonzalez y Vallejo, 267 S.W.3d 556 (Tex. App.—Houston [14th Dist.] 2008)	2
Hanna v. Plummer, 380 U.S. 460 (1965)	15
Health for Life Brands, Inc. v. Powley, 57 P.3d 726 (Ariz. 2002)	13
Hubbard v. Combustion Engineering, 794 F. Supp. 221(E.D. Mich, 1992)	10
In re Lowe, 102 F.3d 731(4th Cir. 1996)	12
Johnson v. Estelle, 625 F.2d 75 (5th Cir. 1980)	13
Milwaukee v. Illinois, 451 U.S. 304 (1981)	13, 15
Quaestor Investments, Inc. v. State of Chiapas, 997 S.W.2d 226 (Tex. 1999) (per curiam)	6, 7, 8

TABLE OF AUTHORITIES—Continued

Page

Seedman v. U.S. Dist. Court for Cent. D. of Cal., 837 F.2d 413 (9th Cir. 1988)..... 10
Spanair v. McDonnell Douglas Corp., 90 Cal. Rptr. 3d 864 (Cal. App. 2d Dist. 2009)..... 10
State v. Lehman, 278 N.W.2d 610 (1979).... 10
State ex rel. Nixon v. Moore, 108 S.W.3d 813, 817-818 (Mo.Ct.App., W.D. 2003)..... 10
Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988)..... 15
Texas Indus., Inc. v. Redcliff Materials, Inc., 451 U.S. 630 (1981)..... 14
Trans Penn Wax Corp. v. McCandless, 50 F.3d 217, 227 (3d Cir. 1995).....9, 10, 11, 12
United States v. Hudson & Goodwin, 11 U.S. (7 Cranch)(1812)..... 14

STATUTES

28 U.S.C. § 71 (1940)..... 11
Title 28, Section 1446(a) of the United States Code 2
Title 28, Section 1446(d) of the United States Code 2
Title 28, Section 1447(c) of the United States Code .....*passim*
Title 28, Section 1447(d) of the United States Code 3, 11
Rules of Decision Act, 28 U.S.C. § 1652 14
The Supremacy Clause of Article VI, Section 2 of the United States Constitution 3
Judicial Code of 1911, § 28..... 11

TABLE OF AUTHORITIES—Continued

OTHER MATERIALS — Page

Martha A. Field, *Sources of Law: The Scope of Federal Common Law*, 99 Harv. L. Rev. 881 (1986) 14

Thomas W. Merrill, *The Common Law Powers of Courts*, 52 U. Chi. L. Rev. 1 (1985) 14

RULES

Federal Rules of Civil Procedure Rule 11 ... 2

Texas Rules of Civil Procedure Rule 237a .. 8, 15

IN THE

Supreme Court of the United States

No. 10-__

MIGUEL ANGEL GONZALEZ GUILBOT,
CARLOS A. GONZALEZ GUILBOT, AND
MARIA ROSA DEL ARENAL DE GONZALEZ,
Petitioners,

v.

MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF MIGUEL ANGEL LUIS GONZALEZ Y VALLEJO, LUIS A. GONZALEZ GUILBOT, JOSE G. GONZALEZ GUILBOT, CARMEN I. GONZALEZ GUILBOT DE URIARTE, GERARDO GONZALEZ GUILBOT, JAVIER GONZALEZ GUILBOT, MADEIRA INTERNATIONAL LTD, FRANCEVILLE INTERNATIONAL, LTD, ARKHANGEL INTERNATIONAL LTD, L&T AMERICAN CORPORATION, AND TG INTERAMERICA CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the final judgment of the Supreme Court of Texas, entered on August 20, 2010 in the above titled proceedings. *See* App. C.

OPINIONS BELOW

The opinion of the Supreme Court of Texas, in *De Gonzalez v. Guilbot* is published at 315 S.W.3d 533 (Tex. 2010) and is reproduced at Appendix at App. B. The opinion of the Court of Appeals of Texas in *Guilbot v. The Estate of Miguel Angel Luis Gonzalez y Vallejo* is published at 267 S.W.3d 556 (Tex. App.—Houston [14th Dist.] 2008) and reproduced at App. A.

JURISDICTION

The Supreme Court of Texas entered its judgment on June 11, 2010. App. B at p. 13a. The Supreme Court of Texas denied petitioner's motion to Revise or Reverse the Court's Judgment on August 20, 2010. App. C at p. 30a.

STATUTES AND REGULATIONS INVOLVED

Title 28, Section 1446(a) of the United States Code provides that:

> A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all processes, pleadings and orders served upon such defendant or defendants in such action.

Title 28, Section 1446(d) of the United States Code provides that:

> Promptly after the filing of such notice of removal of a civil action the defendant or defen-

> dants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

Title 28, Section 1447(c) of the United States Code provides, in relevant part:

> A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

Title 28, Section 1447(d) of the United States Code provides that:

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

The Supremacy Clause of Article VI, Section 2 of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT

A. Overview and Summary

1. Background Facts

* * * *

This dispute centers around ownership of certain businesses and the litigation that ensued between family members after Miguel Angel Luis Gonzalez y Vallejo (Miguel) died. Miguel's will was probated in 2003 in Houston, Texas, and litigation began between the parties in 2004. App. A at 2a.

In May 2004, Maria del Carmen Guilbot Serros de Gonzalez (Miguel's widow and a Respondent in this proceeding), individually and as independent administrator of Miguel's estate, filed suit in probate court against several defendants, including two of Miguel's and Maria's sons, Petitioners Carlos Guilbot Gonzalez and Miguel Angel Guilbot Gonzalez; the third Petitioner is Miguel Angel's wife, Maria Rosa del Arenal de Gonzalez. App. B at 14a-15a.

After several trial settings, in November 2006, Judge Mike Wood, Presiding Judge of Probate Court No. 2, Harris County, Texas, set the case for trial on January 8, 2007. About a week later, Petitioner (Carlos) removed the case to the United States District Court for the Southern District of Texas. Within a month, the federal court ordered that the case be remanded, awarding attorney's fees to Respondents after concluding that Petitioner had no objectively reasonable basis for seeking removal. App. A at 2a.

On January 8, 2007, Judge Wood held a bench trial at which Petitioners did not appear; he entered a

post-answer default judgment awarding Respondents over $206 million in damages. App. A at 3a.

2. Petitioner's Removal to Federal Court

After the removal of the case to federal court, and before the remand order was signed, i.e., while the trial court was divested of jurisdiction over the case, Respondents' trial counsel, Hector Longoria, appeared in the probate court and engaged in an *ex-parte* conversation with Judge Wood in open court and on the record. The substance of the conversation was to devise a method of re-vesting jurisdiction in the probate court quickly so as to avoid resetting the January 8, 2007 trial date. App. D at 34a-38a.

Specifically, when Judge Wood asked about the status of the case, Mr. Longoria replied that the case had been removed and that he was "going to do what I need to do to try to get it remanded back here." App. D at 37a. Judge Woods then stated, "I've had a lot of experience in removals.... I can't do anything." Judge Woods cautioned Mr. Longoria to "read carefully the statutes," and told him that "if the Order of Remand comes, then I would suggest that you bring a certified copy of it and give it to the clerk of this court. Faxing it to me doesn't restore jurisdiction ..." App. D at 38a.

On December 14, 2006, the federal district court signed and entered an order of remand, ordering Petitioners to pay $7,500 in attorney's fees because Petitioners had "no objectively reasonable basis to believe removal in this case was proper." App. B at 15a and 16a. On the same day, the district court provided Longoria with certified copies of the federal court docket sheet, memorandum on remand, and order of remand. The docket sheet indicates that the district court gave these documents to Longoria "so

they can be expedited by hand delivery to Harris County Court no. 2." App. B at 16a. Longoria hand-delivered the documents to the state court clerk the next morning. App. B at 16a.

On January 8, 2007, Judge Wood held a bench trial. App. A at 3a. On January 12, 2007, Judge Wood signed a final judgment awarding approximately $205 million in damages. App. B at 17a.

B. The Lower Courts' Decisions

1. The Decision of the Intermediate Appellate Court—Court of Appeals of Texas, Houston (14th District)

Petitioners appealed the decision of Judge Wood on, among other grounds, the fact that Judge Wood's court lacked post removal jurisdiction because the clerk of the federal district court had failed to mail a certified copy of the remand order to the clerk of the state court as required by the plain language of 28 U.S.C. § 1447(c). App. A at 3a.

The Court of Appeals held that this case involved an "alternative method of delivery" of the remand order "with full knowledge of all the parties and unequivocal, immediate receipt by the state court." App. A at 6a.

The Court of Appeals distinguished a decision of the Supreme Court of Texas, *Quaestor Investments, Inc. v. State of Chiapas*, 997 S.W.2d 226, 229 (Tex. 1999) (per curiam), which stated that a state court's jurisdiction did not re-vest after remand until "*when the federal district court executes the remand order and mails a certified copy to the state court*." App. A at 5a. (Emphasis added).

The Court of Appeals attempted to distinguish *Quaestor* by stating that *Quaestor* dealt with "different points in time when jurisdiction could have been transferred—when the federal court entered the remand order, when the order was mailed, or when the state court received it." The Court of Appeals noted, by contrast, that "*Quaestor* did not address the issue we have here—an alternative method of delivery to the state court with full knowledge of all the parties and unequivocal, immediate receipt by the state court." App. A at 6a.

The Court of Appeals also relied on an intervening decision of the Fifth Circuit involving the Petitioners and Respondents in this matter as setting forth "the law of the case." The unpublished decision of the Fifth Circuit held that Petitioners had waived, by virtue of their appeal to the Fifth Circuit, any argument that the remand procedure was defective because they had never presented that issue to the federal district court. Alternatively, the Fifth Circuit held that it had no jurisdiction to consider a challenge to the district court clerk's compliance with the relevant remand procedure. App. A at 4a.

2. The Opinion of the Supreme Court of Texas

The Texas Supreme Court agreed with the analysis of the intermediate Court of Appeals. The court held that "[t]he central question in *Quaestor* was when the appellate timetable recommenced after remand. The court noted that "[w]e held it recommenced upon the revesting of jurisdiction in state court, which happened 'when the federal district court executes the remand order and mails a certified copy to the state court. To the extent that earlier Texas court of appeals cases indicate that jurisdiction revests when

the federal court executed the remand order, we disapprove of that language." App. B at 20a.

However, the court noted, in footnote 16 of its opinion, that in *Quaestor*, the moving party, not the clerk of the federal district court, had mailed the copy of the remand order to the clerk of the state court and that this was what the court found objectionable. App. B at 20a. Nevertheless, the Texas Supreme Court maintained that the rationale of its decision in *Quaestor* was different than the situation here because the "question presented in this case [is] whether jurisdiction revests when an executed remand order is hand-delivered [by the party opposing the remand] to the state court in lieu of" the clerk of the federal district court mailing it. App. B at 20a.

The court also noted that Texas Rule of Civil Procedure 237a expressly provides for the *plaintiff* to file a certified copy of the remand order with the state court clerk. App B at 22a.

REASONS FOR GRANTING THE WRIT

I. THE VAST MAJORITY OF FEDERAL COURTS FOLLOW THE PLAIN LANGUAGE OF 28 U.S.C. § 1447(c), WHICH STATES THAT JURISDICTION IS NOT RETURNED TO THE STATE COURT ON REMAND UNTIL THE DISTRICT COURT CLERK MAILS A CERTIFIED COPY OF THE REMAND ORDER TO THE CLERK OF THE STATE COURT, AND THIS COURT SHOULD ADOPT THAT APPROACH

The failure of a minority of federal courts to adhere to the plain language of 28 U.S.C. § 1447(c) has generated great confusion among state courts as to

when they are re-vested with jurisdiction after a federal court remand. This is because federal law governs the interpretation of federal statutes and laws such as § 1447(c). *See generally*, *Dice v. Ackron, Canton & Youngstown Railroad Co.*, 342 U.S. 359 (1952); *Felder v. Casey*, 487 U.S. 131 (1988). Accordingly, state courts must choose whether to follow the majority of federal courts that adhere to the plain language of § 1447(c) or those of a minority of federal courts which follow a federal common law interpretation of § 1447(c) that is not mandated by the text of the statute.

It is for these reasons that the United States Supreme Court should grant certiorari and hold that the plain language of 28 U.S.C. § 1447(c)—which requires that the clerk of the federal district court mail a certified copy of the remand order to the clerk of the state court—sets forth the jurisdictional event necessary to divest a federal district court of jurisdiction and return it to the state court as the remand order itself is not self-executing.

In *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 225 (3d Cir. 1995), the Third Circuit held that "the physical mailing of the certified copy [of the remand order] is the jurisdictional event to divest the district court of jurisdiction, because a remand order is not self-executing."

The United States Circuit Courts of Appeal are split on the issue of whether, in light of the "plain language" and legislative history of 28 U.S.C. § 1447(c), the only jurisdictional event that permits re-vesting of jurisdiction in a state trial court after a federal court remand is when the clerk of the federal district court mails a certified copy of the remand order to the clerk of the state court. However, the

vast majority of federal courts, including state courts, follow the plain language approach of the statute. *See generally*, *Spanair v. McDonnell Douglas Corp.*, 90 Cal. Rptr. 3d 864, 869-871 (Cal. App. 2d Dist. 2009) (providing a fairly comprehensive analysis of the issue).

A. The Majority Position

The vast majority of federal courts, as well as many state courts, have followed the plain language of 28 U.S.C. § 1447(c) in ruling that the only jurisdictional event that permits re-vesting of jurisdiction in a state court after a federal court remand is when the clerk of the district court mails a certified copy of the remand order to the clerk of the state court. *See, e.g.*, *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 227 (3d Cir 1995); *Seedman v. U.S. Dist. Court for Cent. D. of Cal.*, 837 F.2d 413, 414 (9th Cir. 1988); *Federal Deposit Insurance Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979); *Hubbard v. Combustion Engineering, Inc.*, 794 F. Supp. 221, 222 Inc. (E.D. Mich., 1992); *Cook v. J.C. Penney Co., Inc.*, 558 F. Supp. 78, 79 (D.C. Iowa 1983); *State ex rel. Nixon v. Moore*, 108 S.W.3d 813, 817-818 (Mo.Ct. App., W.D. 2003); *Blazer Elec. Supply Co. v. Bertrand*, 952 P.2d 857, 859 (Colo. Ct. App. 1998); *State v. Lehman*, 278 N.W.2d 610 (1979). *See generally*, *Spanair v. McDonnell Douglas Corp.*, 90 Cal. Rptr. 3d 864, 869-871 (Cal. App. 2d Dist. 2009).

This conclusion is consistent with both the statutory language and legislative history. Before 1948, the governing statute at the time provided in relevant part:

> "Whenever any cause shall be removed from any State Court into any district court of the United

> States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, *such remand shall be immediately carried into execution*, and no appeal... from the decision of the district court so remanding such cause shall be allowed."

See Judicial Code of 1911, § 28 (italics added); *see also* 28 U.S.C. § 71 (1940).

In 1948, Congress revised the statute and established the procedures contained in 28 U.S.C. 1447(c). In the process, Congress eliminated the earlier provision providing that the "remand shall be immediately carried into existence." The new statute mandated that before the state court could proceed with the case, the district court clerk must first mail a certified copy of the remand order to the state court clerk. The legislative history of 28 U.S.C. § 1447(c) makes clear that Congress intended to legislatively mandate that the district court's mailing of a certified copy of the remand order to be the "determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference." *See Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 225 (3d Cir. 1995).

The rationale underlying 28 U.S. C. § 1447(c) was concisely set forth in *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 225 (3d Cir. 1995). The Third Circuit in *McCandless*, looking to the plain language of § 1447(c) as well as § 1447(d), which makes 1447(c) remands non-appealable, stated that Congress recognized the need for a "determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference." The court went on to hold that

the "key jurisdictional event" was the mailing of the remand order since the mere entry by the court of a remand order is not self-executing. *McCandless*, 50 F.3d 217 at 225.

B. The Minority Position

The Respondents in this case rely on a watered down version of 28 U.S.C. § 1447(c). It is essentially an argument that substance trumps form. This is the position championed by the Texas Supreme Court's decision in this case. The important point in this analysis is whether the underlying goal of 28 U.S.C. § 1447(c) has been accomplished; not whether the requirements of the statute have actually been met. *See De Gonzalez v. Guilbot*, 315 S.W.3d 533, 536-539 (Tex. 2010).

Despite the plain language of § 1447(c), a few federal courts have held that a district court is divested of jurisdiction immediately upon entry of an order remanding the case to the state court. However, the courts in some of these cases were not directly addressing the issue of when a state court's jurisdiction re-vests subsequent to a federal court's remand. Instead, some of these cases stand for the proposition that the district court has no jurisdiction to entertain a motion to reconsider a remand order. *See, e.g., In re Lowe*, 102 F.3d 731, 735-736 (4th Cir. 1996). In that context, courts adhering to the minority view sometimes say that conditioning the transfer of jurisdiction on the mailing of a certified copy of the remand order elevates form over substance. *Id.* at 735.

In other cases, the context involves situations where the parties litigated the case in the state court even though the district court clerk did not send a certified copy of the order to the state court clerk. In

those cases, the losing party later filed an unsuccessful challenge to the judgment on appeal on the ground that the state court never acquired jurisdiction subsequent to the remand. *See, e.g., Johnson v. Estelle*, 625 F.2d 75 (5th Cir. 1980); *Health for Life Brands, Inc. v. Powley*, 57 P.3d 726 (Ariz. 2002); *Citizens Bank & Trust Co. v. Carr*, 583 So.2d 864, 866 ((La. App. 1 Cir. 1991).

The confusion caused by this minority of federal courts could have been avoided by simply adhering to the plain language of § 1447(c). In any case, the plain language of § 1447(c) prevents the federal courts from creating a judicial rule based on federal common law that is contrary to the language of the statute. *See generally*, *Milwaukee v. Illinois*, 451 U.S. 304, 312-332 (1981).

II. THE "PLAIN LANGUAGE" AND LEGISLATIVE HISTORY OF 28 U.S.C. § 1447(c), PREEMPTS ANY ATTEMPTS BY FEDERAL COURTS TO CREATE A FEDERAL COMMON LAW RULE THAT HOLDS THAT FEDERAL DISTRICT COURT REMAND ORDERS ARE SELF-EXECUTING AND THAT STATE COURTS ARE REVESTED WITH JURISDICTION WITHOUT THE NECESSITY FOR THE CLERK OF THE FEDERAL DISTRICT COURT TO MAIL A CERTIFIED COPY OF THE REMAND ORDER TO THE CLERK OF THE STATE COURT

The phrase "federal common law" refers to the development of legally binding federal law by the federal courts in the absence of directly controlling constitutional or statutory provisions. It is generally defined as any rule of federal law created by a court

when the substance of that rule is not clearly suggested by federal enactments, whether congressional or constitutional. *See* Martha A. Field, *Sources of Law: The Scope of Federal Common Law*, 99 Harv. L. Rev. 881, 890 (1986). Stated somewhat differently, federal common law is any federal rule of decision that is not mandated on the face of some authoritative federal text. *See* Thomas W. Merrill, *The Common Law Powers of Courts*, 52 U. Chi. L. Rev. 1, 5 (1985).

There is a strong presumption against the federal courts fashioning common law to decide cases. *See, e.g.*, The Rules of Decision Act, 28 U.S.C. § 1652 (in the absence of positive federal law, federal courts must apply state law); *United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) (1812) (refusal to create a federal common law of crimes); *Erie v. Tompkins*, 304 U.S. 64, 78 (1938) ("[t]here is no federal general common law.").

Nevertheless, the federal courts have fashioned common law in limited circumstances throughout American history. First, federal common law has developed where the Supreme Court has decided that federal rules are necessary to protect uniquely federal interests. *See Texas Indus., Inc. v. Redcliff Materials, Inc.*, 451 U.S. 630, 640 (1981), *quoting Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964). The second major area of federal common law rules is where the Court has acted to effectuate congressional intent. In *Texas Indus., Inc. v. Redcliff Materials, Inc.*, 451 U.S. 630, 647 (1981), the Supreme Court held that the federal judiciary can only formulate a body of common law rules pursuant to clear congressional intent for such action.

However, a clear and unambiguous congressional statute preempts any federal common law rules on that subject. *See Milwaukee v. Illinois*, 451 U.S. 304, 312-332 (1981). That is the situation here. Therefore, the Supreme Court should grant certiorari and hold that the plain language of 28 U.S.C. § 1447(c)—which requires the physical mailing of a certified copy of the remand order—sets forth the jurisdictional event necessary to divest the district court of jurisdiction as the remand order itself is not self-executing.

III. THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION PREEMPTS ANY EFFORT BY THE STATE OF TEXAS OR ITS COURTS TO AUTHORIZE A RULE OF CIVIL PROCEDURE (RULE 237a) OR OTHER RULE WHICH EXPRESSLY PERMITS A *PLAINTIFF* TO FILE A CERTIFIED COPY OF A REMAND ORDER WITH THE STATE COURT CLERK.

When federal law expressly specifies the procedures to be used in a federal statute, state courts must follow that procedure. *See generally Dice v. Ackron, Canton & Youngstown Railroad Co.*, 342 U.S. 359 (1952); *Felder v. Casey*, 487 U.S. 131 (1988).

The plain language of § 1447(c) prevents the state of Texas from creating either a judicial or a legislative rule that creates a direct collision with a federal procedural rule which Congress intended to occupy the field. *See Hanna v. Plummer*, 380 U.S. 460, 472 (1965); *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988).

CONCLUSION

It is for these reasons that the United States Supreme Court should grant certiorari and hold that the plain language of 28 U.S.C. § 1447(c)—which requires that the clerk of the federal district court mail a certified copy of the remand order—sets forth the jurisdictional event necessary to divest a federal district court of jurisdiction and return it to the state court as the remand order itself is not self-executing.

Respectfully submitted,

ARMANDO LOPEZ
ARMANDO LOPEZ, P.C.
8433 Katy Freeway
Suite 200
Houston, Texas 77024
(713) 647-8944
a.h@sbcglobal.net

W. SHERMAN ROGERS
Counsel of Record
Attorney At Law
2900 Van Ness Street, N.W.
Suite 405
Washington, D.C. 20008
(202) 806-8035
srogers@law.howard.edu

Attorneys for Petitioners

November 18, 2010

APPENDIX

APPENDIX A

COURT OF APPEALS OF TEXAS, HOUSTON
(14TH DIST.)

No. 14-07-00047-CV.

MIGUEL ANGEL GONZALEZ GUILBOT,
CARLOS A. GONZALEZ GUILBOT, AND
MARIA ROSA DEL ARENA DE GONZALEZ,
Appellants,

v.

IN THE ESTATE OF MIGUEL ANGEL
LUIS GONZALEZ Y VALLEJO,

Sept. 30, 2008.

OPINION

LESLIE B. YATES, Justice.

Appellants Miguel Angel Gonzalez Guilbot, Carlos A. Gonzalez Guilbot, and Maria Rosa del Arena de Gonzalez appeal from the trial court's sanctions order and judgment awarding over $205 million in compensatory damages, punitive damages, end attorney's fees against them to various parties, including appellee the Estate of Miguel Angel Luis Gonzales y Vallejo. They argue that the sanctions order and judgment are void because (1) they were entered after appellants unsuccessfully removed the case to federal court but before the remand was complete, and thus the trial court had no jurisdiction, and (2)

the sanctions order and judgment were entered while motions to recuse the relevant judges were pending. We conclude that the trial court had jurisdiction because the remand was complete, but the sanctions order and judgment are nevertheless void because they were entered by judges with pending recusal motions. Therefore, we reverse the sanctions order and judgment and remand for further proceedings.

I. Factual and Procedural Background

This dispute centers around a large family enterprise and the litigation that ensued between family members after one of the co-founders of the business died. The co-founder's will was probated in 2003, and litigation began between the parties in 2004.

After several previous trial settings, in November 2006, Probate Judge Mike Wood set the case for trial on January 8, 2007. About a week later, appellants removed the case to the United States District Court for the Southern District of Texas, Judge Lee Rosenthal's court. Within a month, Judge Rosenthal remanded the case and awarded attorney's fees to appellee after concluding that appellants had no objectively reasonable basis for seeking removal. *See* 28 U.S.C. § 1447(c). To expedite the case's progress post-remand, Judge Rosenthal gave appellee's counsel a certified copy of the remand order to hand deliver to state court. Despite the general rule prohibiting appeal of remand order, *see id* § 1447(d), appellants appealed the remand order to the Fifth Circuit Court of Appeals.

While the Fifth Circuit appeal was pending, appellants filed a motion to recuse Judge Wood. Judge Wood refused to recuse himself and referred the

motion to Judge Guy Herman, Presiding Judge, Statutory Probate Courts. Judge Herman then assigned Probate Judge Gladys Burwell to hear the motion to recuse Judge Wood. Appellants thereafter filed motions to recuse both Judge Herman and Judge Burwell. Judge Herman set all three motions for hearing before himself. Appellants did not appear at the hearing but instead sent a legal assistant to observe. Judge Herman denied all the motions to recuse, including the motion to recuse himself, and assessed $12,000 in sanctions against appellants after finding the recusal motions were frivolous.

Judge Wood then held a bench trial and entered a final judgment, awarding judgment against appellants. This appeal followed.

II. Analysis

A. Post-Removal Jurisdiction

In their second issue, appellants argue that the trial court did not have jurisdiction to enter a final judgment because the post-removal jurisdictional transfer back to state court has never been completed.

If a party follows the proper procedure for removing a case to federal court, the state court loses jurisdiction and may not proceed further unless the case is remanded. *See* 28 U.S.C. § 1446(d); *In re Sw. Bell Tel. Co.*, 235 S.W.3d 619, 624 (Tex.2007) (orig. proceeding). If the federal court determines removal was improper and remands the case, "[a] certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court." 28 U.S.C. § 1447(c).

After assessing attorney's fees for a frivolous removal and issuing a remand order, Judge Rosenthal gave appellee's counsel a copy of the remand

order to hand deliver to the state court and thereby expedite the case, and this order was filed in the state court on December 15, 2006, the day after Judge Rosenthal signed the remand order. Appellants argue that because the statute requires the clerk to mail a certified copy of the remand order to the state court, the hand delivery of the order did not complete the jurisdictional transfer. Thus, according to appellants, the state court never regained jurisdiction, and any subsequent orders from the state court are void. *See Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex.1990) (orig. proceeding) (holding that orders issued by a trial court. without jurisdiction are void).

During the pendency of the present appeal, the Fifth Circuit issued its opinion in appellants' federal appeal and concluded that (1) appellants waived on appeal any argument that the remand procedure was defective because they never presented that issue to the district court and (2) in the alternative, it had no jurisdiction to consider a challenge to the clerk's compliance with the relevant remand procedure. *See Gonzalez v. Guilbot*, 255 Fed.Appx. 770, 771-72 (5th Cir.2007).

Appellants did not seek further appeal of this case to the United States Supreme Court, and thus the Fifth Circuit's opinion has become the law of the case. *See City of Houston v. Precast Structures, Inc.*, 60 S.W.3d 331, 338 (Tex. App.-Houston [14th Dist.; 2001, pet. denied) (holding that law of the case doctrine applies when a party does not appeal an intermediate appellate court decision but instead allows the case to continue); *Lee v. Lee*, 44 S.W.3d 151, 154 (Tex.App.-Houston [1st Dist.] 2001, pet. denied) (same). Ordinarily, a court should adhere to prier decisions in the litigation except in situations such as a change

in the facts or parties or if the prior decision was clearly erroneous. *See Briscoe v. Goodmark Corp.*, 102 S.W.3d 714, 716 (Tex.2003); *Lee*, 44 S.W.3d at 153-54. The law of the case doctrine is based on public policy and is intended to achieve uniformity of decisions and to promote judicial economy by narrowing the issues for review in successive steps of the litigation. *See Briscoe*, 102 S.W.3d at 716; *City of Houston*, 60 S.W.3d at 337.

The Fifth Circuit decided the exact issue appellants raise here under identical facts. We see no clear error here or other reason not to follow the Fifth Circuit's rulings as the law of the case. Appellants argue that we should not follow the Fifth Circuit's opinion because, by refusing to condemn a jurisdictional transfer based on hand delivery instead of mailing of the remand order, it conflicts with *Quaestor Investments, Inc, v. Chiapas*, 997 S.W.2d 226 (Tex.1999).[1] *Quaestor* held that jurisdiction revests in the state court after remand "when the federal district court executes the remand order and mails a certified copy of the remand order to the state court." *Id.* at 227. Though *Quaestor* has language referring to mailing, the court was deciding between different points in time when jurisdiction could have been transferred—when the federal court entered the remand order, when the order was mailed, or when the state court

---

[1] Appellants also argue that we cannot follow or even consider the Fifth Circuit's opinion because it is unpublished and thus "not precedent" under Fifth Circuit Local Rule 47.5.4. However, this role specifically excepts opinions needed to examine the law of the case. Thus, even if we accepted appellants' argument that we were prohibited from even considering an unpublished Fifth Circuit opinion, that would not apply in this case. *See also* FED. R.APP. 32.1(a) (prohibiting any restriction on citing to unpublished federal opinions issued on or after January 1, 2007).

received it *See id.* at 228. *Quaestor* did not address the issue we have here—an alternative method of delivery to the state court with full knowledge of all parties and unequivocal, immediate receipt by the state court. Thus, we conclude that the Fifth Circuit's opinion does not conflict with Texas law, thereby constituting a clear error, and we follow its conclusions as the law of the case.

Finally, appellants briefly argue that the state court did not regain jurisdiction because their appeal to the Fifth Circuit also stopped the jurisdictional transfer. This argument is without merit. A state court is free to proceed post-remand, even if the remand order has been appealed, unless a stay order has been issued.

Academy Corp. v. Interior Buildout & Turnkey Constr., Inc., 21 S.W.3d 732, 737 (Tex.App.-Houston [14th Dist.] 2000, no pet.). No stay order was issued in this case.

We conclude that the post-remand jurisdictional transfer to the state court was complete at all relevant times, and therefore we overrule appellants' second issue.

B. Recusal

In their first issue, appellants claim Judge Herman's sanctions order, entered after he denied all the motions to recuse, and Judge Wood's subsequent final judgment awarding over $205 million in damages are void because both were issued while the judges were burdened with recusal motions. We agree.

Texas law is clear that, when faced with a motion to recuse, a judge has only two options: grant the motion to recuse or refer the motion to another judge

for a ruling. *See* TEX. GOV'T CODE ANN. § 25.00255(f) (Vernon Supp.2007); TEX.R. CIV. P. 18a(c); *In re Norman* 191 S.W.3d 858, 860-62 (Tex.App.-Houston [14th Dist.] 2006, orig. proceeding). Judge Wood followed this procedure when he referred his recusal motion to Judge Herman. However, Judge Herman erred when he ruled on his own motion to recuse. *See Norman*, 191 S.W.3d at 860. He should instead have referred the motion to the Chief Justice of the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 74.057(a) (Vernon 2005) (authorizing Chief Justice to appoint judges as necessary); TEX.R. Civ. P. 18a(g) (stating that Chief Justice may appoint justices in conformity with recusal procedures). Because Judge Herman did not have the power to rule on his own recusal motion, all subsequent orders he entered are void. *See Norman*, 191 S.W.3d at 861. This includes Judge Herman's sanctions order and his order denying the motion to recuse Judge Wood. *See id.* Because Judge Herman's order denying the motion to recuse Judge Wood is void, a recusal motion was still pending against Judge Wood when he entered the final judgment, rendering the judgment void as well. *See id.*

Appellee argues that Judge Herman was not required to refer his recusal motion to the Chief Justice. This argument is based on sections 25,00255(i) and 25.0022(r) of the Government Code. See TEX. GOV'T CODE ANN. §§ 25.0022(r), 25.00255(i), (Vernon 2004 & Supp.2007). Under the version of section 25.00255(i) in effect at the time, after receiving a referral on a motion to recuse another judge, the presiding judge of the statutory probate courts must set a hearing before himself or another judge he so

appoints and make other necessary orders.[2] However, this section does not address the situation in which the presiding judge himself is the subject of a recusal motion and certainly does not authorize him to rule on his own recusal motion. Appellee further contends that section 25.0022(r) makes the provisions of Chapter 74 of the Government Code authorizing the Chief Justice to appoint judges inapplicable to a recusal proceeding. Section 25.0022, entitled "Administration of Statutory Probate Courts," addresses subjects such as the selection and duties of presiding and assistant presiding probate judges, who may be assigned, compensation, and expenses. *See* TEX. GOV'T CODE ANN. § 25.0022 (Vernon Supp.2007). Section 25.0022(r) states in part that "Chapter 74 . . . do[es] not apply to the assignment under *this section* of statutory probate court judges." *Id.* § 25.0022(r) (emphasis added). Based on this language, appellee argues that section 74.057(a), which authorizes the Chief Justice to appoint judges as necessary, does not apply to appointing judges to hear recusal motion referrals. We disagree. It is section 25.00255, not section 25.0022, that addresses recusal motions; nothing in

---

[2] *See* Act of June 20, 1997, 75th Leg., R.S., ch. 1435, § 2, 1997 Tex. Gen. Laws 5506, 5507, *amended by* Act of June 15, 2007, 80th Leg., R.S., ch. 1297, § 1, 2007 Tex. Gen. Laws 4363, 4364. The Texas Legislature amended this section, effective September 1, 2007, to require that the presiding judge of the statutory probate courts, instead of setting a hearing or appointing another judge, forward the request to the presiding judge of the administrative judicial district, who will then handle the matter. *See* Act of June 15, 2007, 80th Leg., R.S., ch. 1297, § 1, 2007 Tex, Gen. Laws 4363, 4364-65. Because the effective date of the amendment is after the trial court's rulings, this appeal is governed by the old statute. Thus, for convenience, all references in this opinion to § 25.00255(i) will be to the unamended version in effect at the time of the trial court's rulings.

the statute suggests that the exclusionary language of section 25.0022(r) should also be applied to recusal procedures under section 25.00255. Further, independent of section 25.0022(r), Texas Rule of Civil Procedure 18a(g), which also governs recusal motions, similarly authorizes the Chief Justice to appoint and assign judges to handle recusal motions.

Appellee insists that if Judge Herman had referred his recusal motion to the Chief Justice, appellants would have simply filed yet another recusal motion against hint. To avoid this and to end appellants' attempts to bring the system to a stand still, Judge Herman decided to take a stand and invent his own solution. Appellee urges that this was permissible under the circumstances, relying on cases in which appellate courts facing motions to recuse all judges on the court have "fashioned a remedy" of ruling on each other's recusal motions. *See McCullough v. Kitzman*, 50 S.W.3d 87, 88 (Tex.App.-Waco 2001, pet. denied); *Sears v. Olivarez*, 28 S.W.3d 611, 615-16 (Tex.App.-.Corpus Christi 2000, no pet.). Appellee argues that, by analogy, we should validate Judge Herman's attempt to create a similar remedy. However, Judge Herman's remedy differed in one critical way—rather than having another judge rule on the recusal motion against him, he did it himself. Thus, even if these authorities supported giving Judge Herman discretion to create a similar remedy, he failed to do so because he ruled on his own recusal motion. Though Judge Herman was undoubtedly facing a frustrating situation, we find nothing in these cases that would authorize him to rule rather than referring the recusal motion against him to the Chief Justice.

Next, appellee argues that because the recusal motion filed against Judge Herman was the third recusal motion in the case, Judge Herman could continue to act on the case pursuant to Civil Practice and Remedies Code section 30.016. TEX, CIV. PRAC.& REM CODE ANN. § 30.016 (Vernon 2008). Section 30.016 defines "tertiary recusal motion" as "a third or subsequent motion for recusal . . . filed against a . . . judge by the same party in a case" and states that a judge who declines recusal after a tertiary recusal motion is filed must comply with recusal procedural rules but may otherwise continue to preside over and handle the case as if the motion had not been filed. *Id.* § 30.016(a), (b). This court has interpreted section 30.016 as applying when a third recusal motion has been filed by the same party against the same judge. *See In re Whatley*, No. 14-05-01222-CV, 2006 WL 2257399, at *1 (Tex.App.-Houston [14th Dist.] Aug. 8, 2006, orig. proceeding) (mem, op.). Thus, because all three recusal motions in this ease were filed against different judges, section 30.016 does not apply.[3] Appellee argues that *Whatley* was incorrect and urges us to overrule it, but, absent circumstances not present here, we are bound by our prior decisions. *See Mallios v. Standard Ins. Co.*, 237 S.W.3d 778, 785 (Tex. App.-Houston [14th Distal 2007, pet. denied), cert. denied,—U.S., 129 S.Ct. 56,—L.Ed.2d—(2008).

---

[3] The Texas Legislature has recently added a new section to the Government Code for probate cases, specifically providing that the term "tertiary recusal motion" includes any third or subsequent recusal motion filed in the same case by the same party, regardless of whether the motion is filed against the same or a different judge. *See* TEX. GOV'T CODE ANN. § 25.00256(a) (Vernon Supp.2007). However, this statute was not effective at the time and thus does not apply here. See Act of June 15, 2007, 80th Leg., R.S., ch. 1297, § 2, 2007 Tex. Gen. Laws 4364, 4364-65

Finally, appellee contends that the recusal motion against Judge Herman had several procedural defects and that these defects constitute a waiver of appellants' right to complain about Judge Herman's failure to recuse himself. This court has clearly held that "[e]ven though a motion to recuse may be defective, the challenged judge must either recuse or refer the motion, so that another judge can determine the procedural adequacy and merits of the motion to recuse." *In re Norman*, 191 S.W.3d at 861. Even if the motion is defective, to avoid the appearance of impropriety, that determination must be made by another judge. *Id.* That was not done in this case.

For the foregoing reasons, we determine Judge Herman had no authority to rule on his own motion to recuse, thereby voiding both the sanctions order and final judgment in this case. We sustain appellants' first issue.

C. Motion for Judicial Notice

Long after the briefing in this appeal was completed, appellants filed a "Motion for Judicial Notice," which requested that we take judicial notice of several items.

First, appellants ask that we take notice of a prior pleading in which appellants claim that appellee admitted that Judge Herman should not have ruled on his own recusal motion. This issue is moot because we have already ruled that Judge Herman should not have ruled on the motion.

Second, appellants request that we take notice of a letter pleading they filed regarding their argument that the Filth Circuit opinion, issued on appeal from the remand order, has no precedential value and conflicts with Texas precedent. We have already consi-

dered and rejected these arguments independent of this motion, and thus this portion of the motion is also moot.

Finally, appellants argue we should "take judicial notice of the doctrine of *Stare Decisis*." Appellants do not explain how this argument supports any of their positions in this case, and in any event, we have followed applicable precedent in this ease, rendering this request moot as well.

For these reasons, we deny as moot appellants' motion for judicial notice.

III. Conclusion

We conclude that the trial court had jurisdiction to issue rulings because the post-remand jurisdictional transfer was complete at all relevant times. However, we conclude that Judge Herman had no authority to rule on his own recusal motion, and thus his subsequent rulings were void. As a result, Judge Herman's sanctions order and Judge Wood's final judgment are void. We therefore reverse the sanctions order and final judgment and remand for further proceedings consistent with this opinion.

APPENDIX B

SUPREME COURT OF TEXAS

No. 08-0961

MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, *et al*,
Petitioners,

v.

MIGUEL ANGEL GONZALEZ GUILBOT, CARLOS A. GONZALEZ GUILBOT, AND MARIA ROSA DEL ARENAL DE GONZALEZ,
Respondents.

Sept. 30, 2008.

Argued Jan. 21, 2010.
Decided June 11, 2010,
Rehearing Denied Aug. 20, 2010.

Daryl L. Moore, Daryl L. Moore, P.C., Hector Garcia Longoria, Heard Robins Cloud & Lubel LLP, Houston, TX, Thomas R. Phillips, Martha G. Newton, Baker Botts L.L.P., Austin, TX, for Petitioners.

Andres Perez—Chaumont, Armando Lopez, Armando Lopez, P.C., William "Andy" Taylor, Andy Taylor & Associates, P.C., Eric D. Nielsen, The Nielsen Law Firm, P.C., Houston, TX, for Respondents.

Justice WILLETT delivered the opinion of the Court.

This appeal concerns two issues: (1) the procedure required to revest a state court with jurisdiction after remand from federal court, and (2) the definition of "tertiary recusal motion" in Texas Civil Practice and Remedies Code section 30.016. We agree with the court of appeals that the hand-filing of a remand order in state court is sufficient to transfer jurisdiction back to state court. However, the court of appeals erred in holding that section 30.016's reference to a "tertiary recusal motion" is limited to a third motion filed by the same party against the same judge. Accordingly, we affirm the court of appeals' judgment in part and reverse it in part, and remand to that court with instructions.

I. Background

This intra-family dispute concerns the ownership and control of several food and beverage businesses formerly owned by Miguel Angel Luis Gonzalez y Vallejo, now deceased. Miguel was married to Maria del Carmen Guilbot Serros de Gonzalez, and together they had nine children. When Miguel died in 2003, his will was probated in Harris County. In May 2004, Maria, individually and as independent administrator of Miguel's estate, along with several of the children (Plaintiffs)[1] filed suit in probate court

---

[1] Defendants note that the "Estate of Miguel Angel Luis Gonzalez y Vallejo" named itself as appellee in the court of appeals and as a petitioner/cross-respondent in this Court. Arguing that an "estate" is not a legal entity and cannot sue or be sued, Defendants contend that this Court lacks jurisdiction. However, there is no dispute that Maria and the other Plaintiffs were parties to the trial court's judgment, that they were designated as persons aligned with the Estate in the court of appeals, and that they have been identified a: parties in filings with this Court. In an event, the Court on November 20, 2009 granted

against several defendants including two of Miguel and Maria's sons, Carlos and Miguel (Defendants), for stealing from the family businesses. It June 2006, Judge Mike Wood determiner that Defendants had produced forget stock certificates during discovery in order to claim majority ownership of certain family businesses. Judge Wood issue (sanctions prohibiting Defendants from further claiming or disputing ownership o the corporations, and set a trial on dam ages for January 8, 2007.

A. Remand

On November 14, 2006, Judge Wood gave notice of a hearing to be held November 27. Before the hearing, Defendants, removed the case to federal district court alleging there was complete diversity o citizenship. Nevertheless, Plaintiffs' counsel, Hector Longoria, appeared at the hearing and spoke with Judge Wood it open court and on the record. Whet Judge Wood asked about the status of the case, Longoria replied that the case had been removed, and that he was "going to do what I need to do to try to get remanded back to here." Judge Wood stated, "I've had a lot of experience in removals . . . . I can't do anything." Judge Wood cautioned Longoria to "read carefully the statutes," and told him that "if the Order of Remand comes, then I would suggest that you bring a certified copy of it and give it to the clerk of this Court."

On December 14, 2006, the federal district court signed and entered an order a remand and ordered Defendants to pay $7,500 in attorney fees because Defendant had "no objectively reasonable basis to

---

Plaintiffs "Motion to Substitute Maria del Carmen Guilbot Serros de Gonzalez et al. for the Estate as Petitioners/Cross-Respondents."

believe removal of this case was proper." That same day, the court provided to Longoria certified copies of the federal court docket sheet, memorandum on remand, and order of remand. The docket sheet indicates that these were given to "plaintiff's counsel so that they can be expedited by hand delivery to Harris County Court no. 2." Longoria hand-delivered those documents to the state court clerk the next morning.

Defendants appealed the remand order to the Fifth Circuit, The Fifth Circuit affirmed, holding: (1) Defendants had waived any objection to the remand procedure by failing to object; (2) the Fifth Circuit lacked jurisdiction to review the clerk's compliance with remand procedures under 28 U.S.C. § 1447(e); and (3) the district court did not abuse its discretion in assessing $7,500 in sanctions.[2]

B. Recusal

Approximately two-and-a-half hours prior to Longoria's hand-delivery of the remand order to the state court clerk, Defendants filed a motion to recuse Judge Wood. Judge Wood declined to recuse himself and forwarded the motion to Judge Guy Herman, the Presiding Judge of the Statutory Probate Courts. Judge Herman appointed Judge Gladys Burwell to hear the motion and set a hearing date. Prior to the hearing, Defendants' counsel filed a second motion to recuse, this one against Judge Burwell. Defendants' counsel then filed a third recusal motion, this one against Judge Herman. Judge Burwell forwarded the motions to Judge Herman, who reset all pending

---

[2] *Gonzalez v. Guilbot*, 255 Fed.Appx. 770, 771-72 (5th Cir.2007).

recusal motions for hearing on January 8, 2007. Defendants did not appear at that hearing.

Judge Herman first dismissed the motion to recuse Judge Burwell because it was filed by the attorney for the Defendants on his own behalf, not by the Defendants themselves, and Texas law requires that motions to recuse be "filed by parties, not by attorneys." Judge Herman then dismissed the motion to recuse himself because it was also filed on behalf of Defendants' counsel, not on behalf of the Defendants. Judge Herman went on to note that the motions improperly invoked Texas Rule of Civil Procedure 18a rather than Texas Government Code section 25.00255, which governs remise' procedure in statutory probate courts. Finally, Judge Herman heard the motion to recuse Judge Wood. Because Defendants did not put on any evidence or argument in support of their motion, Judge Herman denied the motion and awarded sanctions in the amount of $12,000 for "frivolous pleadingls]".

After the recusal hearing, Judge Wood began a bench trial. Again, Defendants did not appear. Judge Wood signed a final judgment for Plaintiffs on January 12, 2007, awarding roughly $205 million in damages.[3]

---

[3] Defendants have filed a Request to Take Judicial Notice concerning a March 19, 2010 final judgment rendered against Plaintiffs by a Mexican federal court, purportedly holding that a "Family Agreement" among the parties is null and void. Defendants do not persuade us that the Mexican judgment, rendered years after the trial-court judgment in the case before us, should have any effect on this appeal. They concede that a trial court's judgment is final for purposes of res judicata or collateral estoppel even while the case is on appeal. *See Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex.1986),

C. Appeal

Defendants raised two discrete procedural points, the first governed by federal remand law, the second by state recusal law. Defendants argued the trial-court judgment and sanctions order were void because they were entered (1) before jurisdiction had revested in state court, and (2) while recusal motions were pending.

The court of appeals rejected the first argument but accepted the second.[4] It held that jurisdiction had revested in Judge Wood's probate court, but his judgment and Judge Herman's sanctions order were nevertheless void given the three pending recusal motions.[5] The court of appeals relied on its prior interpretation of Texas Civil Practice and Remedies Code section 30.016 in *In re Whatley*[6] and held that the provision for tertiary recusal motions only applies when a third recusal motion has been filed by the same party against "the same judge."[7] The parties filed cross-petitions for review.

II Discussion

A. Remand

The revesting-of-jurisdiction question turns on this portion of 28 U.S.C. § 1447(c): "A certified copy of the order of remand shall be mailed by the clerk to the

---

[4] 267 S.W.3d 556, 558.

[5] *Id.*

[6] No. 14-05-01222-CV, 2006 WL 2257399 (Tex.App.-Houston [14th Dist] Aug, 8, 2006, orig. proceeding) (mem. op.), *opinion withdrawn and superseded by In re Whatley*, 2006 WL 2948230 (Tex.App.-Houston [14th Dist; Oct. 13, 2006, orig. proceeding) (mem. op).

[7] 267 S.W.3d at 562-63.

clerk of the State court. The State court may thereupon proceed with such case." Defendants argue that section 1447(c) contemplates mailing and only mailing, so Plaintiffs' hand-delivery did not revest jurisdiction in the probate court but rather circumvented and violated the remand procedures we mandated in *Quaestor Investements, Inc. v. State of Chiapas*.[8] We disagree. When determining jurisdiction under section 1447(c), what matters more is what the federal court ordered, not what the federal clerk mailed.

In *Quaestor*, a state district court granted a default judgment to Quaestor Investments, a Texas corporation, against the State of Chiapas on April 19, 1995.[9] On October 5, 1995, five months and sixteen days after the default judgment was signed, Chiapas removed the suit.[10] The federal district court remanded the case on December 28, 1995.[11] On August 29, 1996, Chiapas filed a petition for writ of error in the court of appeals,[12] and Quaestor moved to dismiss the petition as untimely, arguing the petition must have been brought within six months of the date of judgment.[13] The court of appeals overruled Quaestor's motion to dismiss and remanded to the trial court, holding that the appellate timetable recommenced whet Quaestor gave notice to Chiapas

---

[8] 997 S.W.2d 226 (Tex. 1999) (per curiam).

[9] *Id.* at 227.

[10] *Id.*

[11] *Id.*

[12] Writ of error appeals under former Rule of Appellate Procedure 45 were replaced in 1997 with restricted appeals under Rule 30. See TEX. R.APP. P. 30 & cmt.

[13] *Quaestor*, 997 S.W.2d at 227.

of remand.[14] Quaestor then filed a petition for review in this Court.

The central question in *Quaestor* was when the appellate timetable recommenced after remand.[15] We held it recommenced upon the revesting of jurisdiction in state court, which happened "when the federal district court executes the remand order and mails a certified copy to the state court. To the extent that earlier Texas court of appeals cases indicate that jurisdiction revests when the federal court executes the remand order, we disapprove of that language."[16] Defendants thus claim *Quaestor's* broad language definitively established that the pivotal event for revesting is the mailing of the remand order by the federal-court clerk to the state-court clerk. Defendants misconstrue our holding.

Importantly, *Quaestor* did not involve the question presented here: whether jurisdiction revests when an executed remand order is hand-delivered to the state court in lieu of mailing. Today's case raises an alternative delivery method, some-thing we had no occasion to examine in *Quaestor* In short, *Quaestor* simply can not bear the unduly rigid reading urged by Defendants.

Pressing their argument that hand-delivery of the remand order did not revest jurisdiction in state court, Defendants argue that neither the federal district court nor the state court can be vested with

---

[14] *Id.* at 227-28.

[15] *Id.* at 227.

[16] *Id.* at 229. Chiapas argued that the appellate timetable recommenced either when the Fifth Circuit dismissed the appeal of the remand order or when Chiapas mailed a copy of the remand order to the state district clerk. *Id.* at 228.

jurisdiction, so the case has become moot. According to Defendants, the federal district court has been divested of jurisdiction, including the jurisdiction to reconsider or modify its remand order. Next, jurisdiction never revested in the state court because hand-delivery was defective. Finally, the mailing of a certified copy of the remand order to the state clerk can never occur because "[t]he federal court lacks jurisdiction to correct [Plaintiffs] error." Defendants therefore contend that jurisdiction has been destroyed in both courts because the "key jurisdictional event" did not, and can never, occur.

We reject Defendants' argument that both federal and state courts have been divested of jurisdiction and the case now exists in a strange procedural twilight zone.[17] Consistent with section 1447(c) and its aim to smooth state-federal interactions, we hold that hand-delivery of the remand order in this case successfully effected the transfer of jurisdiction from federal to state court. It is beyond dispute that the federal district court expressed its unmistakable

---

[17] *See Health for Life Brands, Inc. v. Powley*, 203 Ariz. 536, 57 P.3d 726, 731 (Ariz.Ct App. 2002) ("A conclusion that the superior court regains the power to proceed upon entry of the remand order in federal court prevents a case from floundering in some sort of legal limbo while awaiting the ministerial task of mailing a copy of the remand order. Excessive delay in the resolution of disputes is thereby avoided. This approach also furthers the intent of Congress that any doubts about the existence of removal jurisdiction in the federal courts should be resolved in favor of remand and state court jurisdiction."); *see also City of Orange City v. Lot 10*, No. 98-1389, 2002 WL 100674, at *2 (Iowa Ct.App. Jan.28, 2002) ("We reject [the defendant's] contention that the district court lacked jurisdiction when it acted prior to having received a certified copy of the remand order from the Federal District Court.").

intention to divest itself of jurisdiction and return jurisdiction to the state court, by (1) signing and entering an order of remand, (2) creating a certified copy of the remand order, and (3) providing that certified copy to counsel for expedited delivery to the state court., all of which occurred before the state court took any action in the case.

We also reject Defendants' argument that allowing hand-delivery of the remand order to effect jurisdictional transfer in this case would destroy transparency and uniformity in the remand procedures. To the contrary, Texas Rule of Civil Procedure 237a expressly provides for the *plaintiff* to file a certified copy of the remand order with the state court clerk.[18] Efforts to quickly recommence proceedings in the state court following an unsuccessful and apparently frivolous removal actually farther the policy of avoiding excessive delay in resolving disputes.[19]

---

[18] TEX.R, Civ. P. 237a states:

> When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. No default judgment shall be rendered against a party in a removed action remanded from federal court if that party flied an answer in federal court during removal.

[19] *See Health for Life Brands, Inc.*, 57 P.3d. at 731 ("To hold under these circumstances that the [federal) court retains jurisdiction and the [state; court lacks the power to proceed would violate the principle that removal and remand procedures should not be construed to allow undue delay in the resolution of cases or to waste judicial resources."); *see also* FED.R.CIV.P. I (instructing courts to construe and administer the federal rules

Defendants here resumed litigation in the probate court with full knowledge of the remand. Further, it is undisputed that the probate court took no action until after the remand order had been hand-delivered there. In light of these circumstances, Plaintiffs' hand-delivery of the remand order was sufficient to revest jurisdiction in the probate court.[20]

B. Recusal

Plaintiffs argue in their cross-petition for review that the motion to recuse Judge Herman was a tertiary recusal motion, and therefore the court of appeals erred in holding that Judge Herman's sanctions order and Judge Wood's final judgment were void. We agree with Plaintiffs.

The court of appeals held that under the general "recuse or refer" rule in Government Code section 25.00255(f), a judge against whom a recusal motion has been filed "has only two options: grant the motion to recuse or refer the motion to another judge for a ruling."[21] Thus, the court concluded, "Judge Herman erred when he ruled on his own motion to recuse"

"to secure the just, speedy, and inexpensive determination of every action and proceeding"); *Balestriere Lanza PLLC v. Silver Point Capital, LP*, No. 08 Civ. 473 l(GEL), 2008 WL 2557424, at *2 (S.D.N.Y. June 26, 2008) ("Though [Rule 1] does riot, strictly speaking, govern the interpretation of § 1447(c), it should be the touchstone not only of judicial action, but of the behavior of members of the bar as well.").

[20] Regardless of whether the court of appeals should have relied on the law-of-the-case doctrine, *see* 267 S.W.3d at 560, the court properly recognized that "*Quaestor* did root address the issue we have here" and held that "the post-remand jurisdictional transfer to the state court was complete at all relevant times." *Id.* at 560, 561.

[21] *Id.* at 561.

rather than referring the motion to the Chief Justice of the Supreme Court pursuant to Government Code section 74.057(a) and Texas Rule of Civil Procedure 18a(g)[22] "Because Judge Herman did not have the power to rule on his own recusal motion," the court reasoned, "all subsequent orders he entered are void,"[23]

Plaintiffs argue that Judge Herman's sanctions order and Judge Wood's final judgment are not void for two reasons. First, the motion to recuse Judge Herman was the third recusal motion filed in the case and thus a tertiary recusal motion under Civil Practice and Remedies Code section 30.016, allowing Judge Herman to continue presiding over the case. Second, Plaintiffs contend that the exception for procedurally defective motions applies to the motion to recuse Judge Herman.

We first consider whether the motion to recuse Judge Herman was a tertiary recusal motion. Section 30.016 allows "a judge who declines recusal after a tertiary recusal motion is filed" to "preside over the case," "sign orders in the case," and "move the case to final disposition as though a tertiary recusal motion had not been filed."[24] Former section 30.016(a), applicable to this case, defined a "tertiary recusal motion" as "a third or subsequent motion for recusal or disqualification filed against a district court, statutory probate court, or statutory county court judge by the same party in a case."[25] The court of

---

[22] *Id.*

[23] *Id.*

[24] TEX, CIV. PRAC. & REM.CODE § 30.016(b)(1)-(3).

[25] Act of May 26, 1999, 76th Leg., R.S., ch. 608, § 1, 1999 Tex. Gen. Laws 3148.

appeals followed its previous decision *In re Whatley*,[26] where the court. interpreted section 30.016 as applying only to "a third recusal motion . . . filed by the same party against the same judge."[27] We disagree with that reading and hold that section 30.016 applies to a third recusal motion filed by the same party against any judge.

When construing statutes, courts must look first to the plain and common meaning of the words chosen.[28] If the statutory language is unambiguous, the judge's inquiry is at an end.[29]

The earlier version of section 30.016(a) provided:

> In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed against a district court, statutory probate court, or statutory county court judge by the same party in a case.[30]

---

[26] No. 14-05-01222-CV, 2006 WL 2257399 (Tex.App.-Houston [14th Dist.] Aug. 8, 2906, orig. proceeding) (mem. op.), *opinion withdrawn and superseded by In re Whatley*, 2006 WL 2948230 (Tex.App.-Houston [14th Dist.) Oct. 13, 2006, orig. proceeding) (mem. op.).

[27] 267 S.W.3d at 562.

[28] *See FKM P'ship, Lid. v. Bd. of Regents- of the Univ. of Houston Sys.*, 255 S.W.3d 619, 633 (Tex.2008) ("We use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired, but otherwise, we construe the statute's words according to their plain and common meaning unless a contrary intention is apparent From the context, or unless such a construction leads to absurd results,").

[29] *See Alex Sheshunoff Mgmt. Servs., LP. v. Johnson*, 209 S.W.3d 644, 651-52 (Tex.2006).

[30] Act of May 26, 1999, 76th Leg., R.S., ch. 608, § 1, 1999 Tex. Gera. Laws 3148.

Effective September 1, 2007, the Legislature removed statutory probate judges from section 30.016(a), so the current statute only applies to district or statutory county court judges. Simultaneously, the Legislature added section 25.00256(a):

> In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed in a case against any statutory probate court judge by the same party. The term includes any third or subsequent motion filed in the case by the same party, regardless of whether that motion is filed against a different judge than the judge or judges against whom the previous motions for recusal or disqualification were filed.[31]

The prior version of section 30.016(a) applies to this case. Defendants argue that, in keeping with the canon of construction that the Legislature is presumed not to have done a useless act, the Legislature's 2007 amendments demonstrate that lawmakers believed they were changing the law regarding statutory probate courts. In order to change the law, "tertiary recusal motion" in the prior version of section 30.016 must have meant the third recusal motion filed by the same party against the same judge. However, our analysis begins not with canons of construction or extrinsic aids, but with statutory text.[32] Former section 30.016(a) states that a tertiary recusal motion is a "third or subsequent motion

---

[31] TEX GOV'T CODE § 25.00256(a).

[32] *See In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex.2007) ("if a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aids.").

for recusal . . . filed against a . . . statutory probate court . . . judge by the same party. . . .” The Legislature chose the word “a,” presumably on purpose, not the words “the same.” And lawmakers certainly knew when to use the latter, having done so to precede “party” in the same sentence. Neither text nor context suggests that “a” means “the same” rather than “any.” Defendants’ interpretation, adopted by the court of appeals, invites us to embellish the statute. We decline, mindful too that Defendants’ interpretation would produce absurd results, with litigants able to delay resolution of their cases by clogging courts with a seemingly limitless number of recusal motions.

Our chief aim is to determine and give effect to the Legislature’s intent,[33] and where the statutory language is straightforward, it is determinative.[34] Because the recusal motion filed against Judge Herman was the third recusal motion filed by Defendants (and therefore a tertiary recusal motion), Judge Herman was permitted to continue to “preside over the case,” “sign orders in the case,” and “move the ease to final disposition as though a tertiary recusal motion had not been filed.”[35] Accordingly, the court of

---

[33] *Hernandez v. Thrum*, 289 S.W.3d 316, 318 (Tex.2009).

[34] *See Alex Sheshunoff Mgmt. Servs.*, 209 S.W.3d at 651-52.

[35] We agree with the court of appeals that under section 30.016(b) Judge Herman should not have ruled on the recusal motion filed against him. Plaintiffs make the blanket assertion that because the motion to recuse Judge Herman was a tertiary recusal motion, Judge Herman was allowed to rule on his own recusal motion. However, nothing in section 30.016 contemplates allowing judges to deny recusal motions pending against them, and in fact instructs judges “who decline[ ] recusal after a tertiary recusal motion is filed [to] comply with applicable rules of procedure for recusal and disqualification . . . .” Judge

appeals erred in reversing the sanctions order entered by Judge Herman and the final judgment entered by Judge Wood.[36]

III. Conclusion

The court of appeals was right on remand but wrong on recusal. Plaintiff's hand-delivery of the certified remand order from the federal district court to the clerk of the state court was sufficient, to revest jurisdiction in the state court. We decline Defendants' invitation to add a measure of rigidity into section 1447(c) that simply is not there. As for recusal, a tertiary recusal motion is a third motion filed by the same party against any judge. That is, the word "third" in section 30.016(a) refers to the motion, not

---

Herman eventually referred that motion to CHIEF JUSTICE JEFFERSON, and we and no prejudice stemming from Judge Herman's belated referral. Also, as this was a tertiary recusal motion, Judge Herman retained authority under section 30.016(b) to take other actions, such as signing the sanctions order against Defendants and denying the recusal motion against Judge Wood.

[36] Plaintiffs alternatively argue an exception to the "recuse or refer" rule applies: the exception fur procedurally defective motions. Plaintiffs contend that Defendants waived the right to complain about Judge Herman's failure to refer the motion filed against him because the motion failed to comply with the procedural requirements of Government Code section 25.00235. The court of appeals rejected this argument based on its holding in a prior case that "[e]ven though a motion to recuse may be defective, the challenged judge must either recuse or refer the motion, so that another judge can determine the procedural adequacy and merits of the motion to recuse." 267 S.W.3d at 563 (quoting *In re Norman*, 191 S.W.3d 858, 861 (Tex.App.-Houston [14th Dist] 2006, orig. proceeding)). As the first argument advanced by Plaintiffs decides today's case, we need not reach the question of whether a procedurally defective motion provides an exception to the "recuse or refer" rule.

to the judge. Accordingly, we affirm the court of appeals' judgment in part, reverse it in part, and remand to the court of appeals. The court of appeals shall abate pending a ruling on the motion to recuse Judge Herman. If the motion is denied, the court of appeals shall affirm the trial court's judgment. If the motion is granted, the court of appeals shall reverse the trial court's judgment and remand to that court for further proceedings consistent with this opinion.

Justice GUZMAN did not participate in the decision.

APPENDIX C

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

August 20, 2010

Mr. Christopher A. Prine
Clerk, Fourteenth Court of Appeals
1307 San Jacinto, 11th Floor
Houston, TX 77002

RE: Case Number: 08-0961
Court of Appeals Number; 14-07-00047-CV
Trial Court Number: 344,157-401

Style: MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, et al,

v.

MIGUEL ANGEL GONZALEZ GUILBOT, CARLOS A. GONZALEZ GUILBOT, AND MARIA ROSA DEL ARENAL DE GONZALEZ

Dear Mr, Prine;

The judgment of the Supreme Court of Texas is final in the above referenced cause and the enclosed mandate was issued today. Enclosed with the mandate is a certified copy of our cost bill showing charges and payments as reflected by the record for your use in settlement between the parties.

Sincerely,

/s/ Blake A. Hawthorne
Blake A. Hawthorne, Clerk
By Monica Zamarripa, Deputy Clerk

Enclosures (2)

cc: Ms. Beverly Kaufman
Mr. Daryl L, Moore
Mr, William A. 'Andy' Taylor
Mr. Thomas R. Phillips
Mr. Armando Lopez

IN THE SUPREME COURT OF TEXAS

No. 08-0961

MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, *et al*,
Petitioner,

v.

MIGUEL ANGEL GONZALEZ GUILBOT, CARLOS A. GONZALEZ GUILBOT, AND MARIA ROSA DEL ARENAL DE GONZALEZ,
Respondents.

MANDATE

To the Court of Appeals for the Fourteenth District, Greetings:

Before our Supreme Court on June 11, 2010, the Cause, upon petition for review, to revise or reverse your Judgment.

No. 08-0961 in the Supreme Court of Texas

No. 14-07-00047-CV in the Fourteenth Court of Appeals

No. 344,157-401 in the Probate Court No 2 of Harris County, Texas, was determined; and therein our said Supreme Court entered its judgment or order in these words:

THE SUPREME COURT OF TEXAS, having heard this cause on petition for review from the Court of Appeals for the Fourteenth District, and having considered the appellate record, briefs, and counsels' argument, concludes that the court of appeals'

judgment should be affirmed in part and reversed in part.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

1) The portion of the court of appeals' judgment pertaining to the revesting of jurisdiction in the probate court after remand from the federal district court is affirmed;

2) The portion of the court of appeals' judgment pertaining to recusal is reversed;

3) The cause is remanded to the court of appeals for further proceedings consistent with this Court's opinion; and

4) Petitioners Maria del Carmen Guilbot Serros de Gonzalez, et al, shall recover, and Respondents Miguel Angel Gonzalez Guilbot, Carlos A. Gonzalez Guilbot, and Maria Rosa del Arenal de Gonzalez shall pay, the costs incurred in this Court.

Copies of this judgment and the Court's opinion. are certified to the Court of Appeals for the Fourteenth District and to the Probate Court of Harris County, Texas, for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have recognized, obeyed, and executed.

BY ORDER OF THE SUPREME COURT OF THE STATE OF TEXAS,

with the seal thereof annexed, at the City of Austin, this the 20th day of August, 2010.
/s/ Blake A. Hawthorne, Clerk
Blake A. Hawthorne, Clerk
By Monica Zamarripa, Deputy Clerk

APPENDIX D

[1] REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME(S)
CAUSE NO. 344,157-401

IN THE ESTATE OF
MIGUEL ANGEL LUIS GONZALEZ Y VALLEJO,
DECEASED

IN THE PROBATE COURT'
NO. 2
HARRIS COUNTY, TEXAS

IN RE ESTATE OF MIGUEL ANGEL LUIS
GONZALEZ Y VALLEJO, *et al*,
Plaintiffs,

v.

MIGUEL ANGEL GONZALEZ GUILBOT, *et al*.,
Defendants.

IN THE PROBATE COURT
NO. 2
HARRIS COUNTY, TEXAS

BE IT REMEMBERED that on the 27th day of November, 2006, came on to be heard outside the presence of a jury, in the above-entitled and numbered cause; and the following proceedings were had before the Honorable Mike Wood, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by Computerized Stenotype Machine, Reporter's Record produced by Computer-Assisted Transcription.

[2] APPEARANCES

Attorneys for Plaintiffs, Maria del Carmen Guilbot Serros de Gonzalez, Individually and as Independent Administrator of the Estate of Miguel Angel Luis Gonzalez y Vallejo ("the Estate"), Luis Amadeo Gonzalez Guilbot, Alejandro Amadeo Gonzalez Guilbot, Guillermo Gonzalez Guilbot, Carmen Isabel Gonzalez Guilbot, Gerardo Gonzalez Guilbot, and Javier Gonzalez Guilbot:

Hector G. Longoria
State Bar No, 00794185
Heard, Robins, Cloud, Lubel & Greenwood, L.L.P.
500 Dallas, Suite 3100
Houston, Texas 77002
Telephone: (713) 650-1200
Fax: (713) 650-1400

[3] CHRONOLOGICAL INDEX

VOLUME 1

November 27, 2006	Page	Vol.
Appearances	2	1
Reporter's Certificate	7	1

[4] THE COURT: What are we doing?

MR. LONGORIA: Well, Your Honor, they filed in Federal Court saying diversity of jurisdictions and, a bunch of other reasons why this case should be removed to Federal Court. Obviously, I'm going to do what I need to do to try to get it remanded back to here.

But I would just bring it to the Court's attention that today this Court was supposed to hear the motion on the privilege log list which was supposed to be given to us today. We were supposed to hear the continuation of the MSJ against their counterclaim. There was a Motion to Compel certain documents from them and we also had the TI hearing. Had I served the TRO in time, maybe this Federal Court thing wouldn't have happened. With the vacation and everything, it just didn't happen in time.

I just wanted to give the Court advise as to what was going to happen, what, they stopped, and what they're trying to stop on January 8th and I think this is just par for the Court. When I was here on the Motion for Continuance, I said they want to stop it. They don't want us to go to trial. I don't want anymore excuses, Your Honor. I just want to vent it off my chest right now because, I mean, I'm just furious. It got mailed to me on the 21st, and I didn't get it until this morning. It [5] could have been—it could have been, you know, a bunch of things. But I got it today in the mail with a letter. So there wasn't even a courtesy issue.

THE COURT: What Court is it in?

MR. LONGORIA: Lee Rosenthal's, Judge Lee Rosenthal's. So, like I said, I'm going to do what I need to do to try to get it remanded on an emergency

basis and have our hearing, et cetra, et cetera. I think it's frivolous on a bunch of different reasons. Again, I just want to bring to the Court's attention—

THE COURT: I've had a lot of experience in removals because I have a guardianship that had been removed. It has been removed to Federal Court in Boston and to Houston on the same guardianship. I can't do anything.

MR. LONGORIA: I understand, Your Honor. I just—

THE COURT: I would suggest that you read carefully the statutes. What it says is when it's remanded, I don't regain jurisdiction until the Order of Remand is forwarded from the Federal clerk to the clerk of this Court. Faxing it to me doesn't restore jurisdiction, at least under one interpretation of the cases.

MR. LONGORIA: Okay.

THE COURT: So when the Order of Remand—[6] if the Order of Remand comes, then I would suggest that you bring a certified copy of it and give it to the clerk of this Court.

MR. LONGORIA: That's when this ball gets rolling back in this Court?

THE COURT: Yes. Because, otherwise, there's some question; and it's been a big issue in my Court on this guardianship.

MR. LONGORIA: I appreciate it, Your Honor. And, again, hopefully, if were able to get it back on track, I'm pushing forward for January 8th like we have intended.

THE COURT: Well, I'm here.

MR. LONGORIA: Thank you.

(Proceedings concluded.)

[7] THE STATE OF TEXAS
COUNTY OF HARRIS

I, TINA K. WHITE, Official Court Reporter in and for Probate Court No. 2 of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporters Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties

I further certify that the total cost for the preparation of this Reporter's Record is $44.00 and was paid by Andres P. Chaumont

WITNESS MY OFFICIAL HAND this the 6th day of January, 2007.

/s/ Tina K. White, CSR-RPR
Tina K. White, CSR-RPR
Official Court Reporter
Probate Court No. 2
Certificate No. 5488
Expires: December 31, 2008
201 Carolina, Suite 680
Houston, TX 77002
713-368-6729